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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,812	09/18/2003	Phillip I. Rosengard	074767.0101	8744
45507	7590	05/07/2007	EXAMINER	
BAKER BOTTS LLP 2001 ROSS AVENUE 6TH FLOOR DALLAS, TX 75201-2980			SMITH, MARCUS	
			ART UNIT	PAPER NUMBER
			2616	
			NOTIFICATION DATE	DELIVERY MODE
			05/07/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOmail3@bakerbotts.com
PTOmail4@bakerbotts.com

11

Office Action Summary	Application No.	Applicant(s)	
	10/666,812	ROSENGARD ET AL.	
	Examiner	Art Unit	
	Marcus R. Smith	2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 September 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-26 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) 26 is/are allowed.
 6) Claim(s) 1,3,9,11 and 17-25 is/are rejected.
 7) Claim(s) 2, 4-8, 10, and 12-16 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 18 September 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>9/18/03, 1/20/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 17-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. These claims refer to computer program per se.

The applicant should review the Interim Guidelines for 35 U.S.C. 101:

<http://www.uspto.gov/web/offices/pac/dapp/ropa/preognitice/guidelines101_20051026.pdf>

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 9, 11, 17, 19, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosengard et al. (US 7,013,318) see IDS dated 9/18/03 (document N) in view of Connor et al. (US 7,039,061).

with regard to claims 1, 9, 17, and 25, Rosengard et al. teaches:

A method for encapsulating a plurality of packets into a frame, comprising:
receiving a plurality of packets at a station (10) of a plurality of stations of a network, each packet associated with a delay requirement (jitter tolerant), the delay

requirement reflecting a deadline corresponding to at least a subset of the plurality of stations (column 2, lines 55-65: the switch, 26, receives the packets (flows) and each flow based on the jitter tolerance parameter.);

directing the plurality of packets to a plurality of queues (video or data queues) of the station (column 3, lines 3-11: the interface card, 38, directs the flows into the queues (40 or 41).);

determining that one or more packets at a queue of the plurality of queues are ready to be encapsulated into a frame in accordance with the delay requirements associated with the one or more packets (column 3, lines 18-27: The processor, 43, determines when encapsulate the flows based.); and

encapsulating the one or more packets into the frame for transmission using the available channel (column 3, lines 40-64: the Scheduler, 46, outputs (transmits) encapsulated flows to the receiver, 32.).

Rosengard et al. discloses all of the subject matter as described above except for detecting an available channel of the network and the station being part of a plurality of stations of a network.

Connor et al teaches a machine that stores packets in a multiple of queues based on its priority (column 5, lines 30-40). That machine can be used in all the clients, 101,103, 105, 107 in the network, 109, (column 4, lines 5-15). This machine teaches step in its method of identify transmit request (see step 305: column 6, lines 25-30). The examiners views the identifying transmit request as detecting an available channel. The

Art Unit: 2616

machine identifies transmit request in order to reduce the time spent preparing and processing network transmit requests (column 2, lines 40-45).

Therefore it would have been obvious to one having ordinary skill in the art at the time invention was made to identify transmit request as taught by Connor et al. in the system of Rosengard et al. to reduce the time spent preparing and processing network transmit requests.

with regard to claims 3, 11, and 19, Rosengard et al. teaches:

further comprising selecting the queue of the plurality of queues according to a selection procedure (see step 414: column 11, lines 48-52: The examiner views check for another queue as a selection procedure.).

Allowable Subject Matter

4. Claim 26 is allowed.
5. Claims 2, 4-8, 10, and 12-16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus R. Smith whose telephone number is 571 270 1096. The examiner can normally be reached on Mon-Fri. 7:30 am - 5:00 pm every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau Nguyen can be reached on 571 272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MRS 4/27/07



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